

REMARKS/ARGUMENTS

Claims 12 through 17 have been canceled since they are duplicates of claims 8 through 10.

Seifert (US Patent No. 5,035,348) discloses a container comprising a flexible fluid-containing vessel which has a seal that seals a top wall of the vessel to a bottom wall and is shaped to concentrate in a region thereof forces resulting from pressure generated by applying a force to the container. The vessel is first sealed at one end by a heat sealer. Next, liquid is poured into the vessel and the open end of the vessel is then sealed. In one embodiment, a saturable end-piece is attached to the end of the vessel. In Seifert, both ends of the container must be sealed for its intended purpose. Without either of the seals at both ends, the disclosed container would be unsatisfactory for its intended purpose.

Bainbridge et al. (US Patent No. 1,641,406) discloses a container formed from a rolled sheet of paper. In one embodiment, a row of perforation, or similar paper weakening means, is cut through the sheet along a line parallel to the top of the sheet.

Applicant's invention is a tube filling process for liquid filled cotton swabs comprising the steps of: (1) loading empty plastic tubes into a fixture; (2) sealing one end of said plastic tubes; (3) filling a first substance into said plastic tubes; and (4) affixing an applicator tip to an end of said plastic tubes. The empty plastic tubes must first be loaded into a fixture. In addition, only one end of the plastic tube is sealed. The other end of the plastic tube remains open at the completion of the process.

One of ordinary skill in the art at the time the invention was made would not have been motivated to make the proposed modification. There is no suggestion or motivation, either in the

Application No.: 10/849,085

Amendment dated: June 8, 2005

Reply to Office Action of: March 16, 2005

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Since the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, there is no suggestion or motivation to make the proposed modification. Furthermore, the proposed modification or combination of the prior art would also change the principle of operation of the prior art invention being modified, the teachings of the references are not sufficient to render the claims *prima facie* obvious. The references actually teach away from applicant's invention and render prior art unsatisfactory for intended purpose of applicant's invention. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Examiner had used improper hindsight in arriving at the rejection under 35 U.S.C. §103. The level of skill in the art cannot be relied upon to provide the suggestion to combine references. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.

In addition, there is no reasonable expectation of success, since modification of Seifert by only sealing one end would render the container unsatisfactory for its intended purpose.

The prior art reference also does not teach or suggest all the claim limitations.

Application No.: 10/849,085

Amendment dated: June 8, 2005

Reply to Office Action of: March 16, 2005

Applicant hereby submits that the claim rejections under 35 U.S.C. §112 and §103 have all been overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

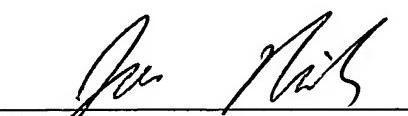

Joe Nieh
Registration Number: 46,961
18760 E. Amar Road, #204
Walnut, CA 91789
Tel: (626) 964-4227
Fax: (626) 854-5717
E-Mail: nieh@justice.com

Application No.: 10/849,085
Amendment dated: June 8, 2005
Reply to Office Action of: March 16, 2005



Certificate of Mailing: I certify that on the date below this document and referenced attachments, if any, will be deposited with the U.S. Postal Service by 1st Class Mail in an envelope addressed to: "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450."

June 8, 2005


Joe Nieh
Registration Number: 46,961
18760 E. Amar Road, #204
Walnut, CA 91789
Tel: (626) 964-4227
Fax: (626) 854-5717
E-Mail: nieh@justice.com